New Jersey Bell Telephone Co. *and* Local 1022, Communications Workers of America, AFL–CIO. Cases 22–CA–15406 and 22–CA–15438

September 28, 1990

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND DEVANEY

On May 16, 1989, Administrative Law Judge Steven B. Fish issued the attached decision. The Respondent, the General Counsel, and the Charging Party filed exceptions and supporting briefs. The Charging Party filed a brief in answer to the Respondent's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions as modified and to adopt the recommended Order as modified.

In October 1987,[2] the Respondent's security department was contacted by a customer complaining of annoying phone calls received on her nonpublished number. The customer indicated that she felt that her nonpublished number had been disclosed by an employee of the Respondent. The Respondent's security representative, Lorraine Vasilik, commenced an investigation into the matter.

In accessing the Respondent's computer network, Vasilik discovered several entries on the complaining customer's account that did not appear to be legitimate. Further inquiry revealed that the computer entries were made by Elizabeth Lynch, a customer service representative employed by the Respondent.

Lynch was subsequently interviewed by Vasilik and another security representative.[3] At the interview, Lynch signed a statement admitting that she had accessed the complaining customer's account and that she disclosed the nonpublished number to her niece. Thereafter, the Respondent suspended Lynch for 5 days based on her misconduct.

On November 9, the same customer again called the Respondent's security department complaining of an upsetting phone call. The customer stated that she had been called by Lynch and was told that Lynch had been interviewed at home, that she was going to lose her job and be criminally prosecuted, and that the customer could be sued for defamation of character.

In late November, the Union filed a grievance regarding Lynch's suspension. In order to process the grievance, Union President Lynn Buckley requested from the Respondent the security department's investigative report into the matter, including a copy of the computer note screen of the account that Lynch allegedly accessed.[4]

The Respondent furnished page two of the note screen to the Union. The Respondent declined to furnish the Union page one of the note screen, however. According to the testimony at the hearing of security representative Vasilik, the Respondent believed that the billing information and nonpublished phone numbers contained on page one were proprietary information, and that the information on page one with respect to conversations between the complaining customer and the Respondent's officials was confidential. The Respondent declined to furnish the Union any portion of the security report in part because the report also reflected conversations between Respondent's officials and the customer.[5]

On February 5, 1988, a complaint issued alleging, inter alia, that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to furnish the Union with the security investigative report and computer note screen.

The judge found that page one of the note screen, as well as the security investigative report, to the extent they reflected conversations and contacts between the customer and the Respondent's officials concerning the complaint and its initiation, constituted information relevant to the Union's processing of the Lynch grievance.[6] The judge further found, however, that this in-

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] All dates refer to 1987 unless otherwise specified.

[3] The judge found, and we agree, that the Respondent unlawfully ignored Lynch's request to have a union representative present at the investigatory interview. *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251 (1975).

[4] The security report comprised the following: (1) a document entitled request for security assistance; (2) notes taken by a security representative; (3) a nonpublished phone number; (4) a note screen; (5) request for a copy of the statement taken from Lynch; (6) request for a copy of the note screen; (7) request to examine personnel records; and (8) transmittal of data. Also included were reports of conversations between the complaining customer and security and supervisory personnel of the Respondent.

The computer note screen comprised two pages. Page one contains the complaining customer's name, nonpublished phone number, billing information, service order activity, and references to conversations between the complaining customer and Respondent's security and supervisory personnel. Page two of the note screen contains the computer references that indicate Lynch's accessing of the complaining customer's account.

[5] The Respondent did furnish the Union, on request, a copy of the statement given by Lynch to security.

[6] We agree with the judge that Union President Buckley's testimony indicates that the Union was interested in obtaining page one of the note screen only to the extent that it reflected the initial customer complaint that commenced the security investigation. The General Counsel has excepted to this finding. Alternatively, even if Buckley's testimony can be read as not so limiting the Union's request, we find that the General Counsel has not established the relevance of the remaining portions of page one of the note screen.

We also agree with the judge that the portions of the security investigative report not furnished to the Union, save for reports of conversations between the complaining customer and the Respondent's officials, are not relevant to the Union's processing of the Lynch grievance. To the extent that the General Counsel's exceptions can be read as excepting to this finding, the General Counsel has not shown that the judge's finding on relevance was in error.

formation constituted witness statements under *Anheuser-Busch, Inc*.,[7] which the Respondent was privileged from disclosing to the Union.

The judge found, contrary to the contention of the General Counsel and the Charging Party, that the Board has not passed on the applicability of the witness statement exception to information such as is in dispute in this case. In the absence of controlling precedent, the judge reviewed the progeny of *Anheuser-Busch* and concluded that the most significant factor in determining the applicability of the witness statement exception is the possibility of witness intimidation or harassment due to disclosure of the information involved. Finding that the phone call Lynch made to the complaining customer was evidence that intimidation and harassment had actually occurred in this case, the judge concluded that the undisclosed portions of the computer note screen and security report reflecting conversations between the Respondent's officials and the complaining customer constituted privileged witness statements under *Anheuser-Busch*. The judge found further that the form of the information—reports made by Respondent's officials that were not adopted in any manner by the complaining customer—did not preclude a finding that the information was a statement under *Anheuser-Busch*. We disagree.

We recognize, as did the judge, that the Board in *Anheuser-Busch* did not articulate a requirement that a statement be formally adopted or set forth in any particular manner in order to come within the witness statement exception. Even absent such a requirement, however, under the undisputed facts of this case we cannot find that the reports made by the Respondent's officials can be construed as a statement made by the complaining customer.

It is undisputed that the customer did not review the reports, have them read to her at any time, or in any manner adopt them as a reflection of any statement or complaint she may have made. Further, there is no contention that the reports are or even approximate a verbatim transcript of the customer's statements. Rather, the reports are in essence the handiwork of the Respondent's officials, reflective only of their impressions of what transpired in the conversations with the complaining customer, as well as whatever other material the officials may have deemed appropriate to include in the reports.[8] Under these circumstances in which the connection between the complaining customer and the reports prepared by the Respondent's officials is so attenuated, we find that the reports are far more readily characterized as the work product of the Respondent than as a statement by the complaining customer. See *Square D Electric Co*., 266 NLRB 795, 797 (1983); *United Technologies Corp*., 277 NLRB 584, 589 (1985).[9]

Our conclusion that the reports do not constitute privileged witness statements is supported by the fact that the customer did not request and did not receive any assurance of confidentiality, unlike in *Anheuser-Busch*. Thus, in this case no information given in confidence will be disclosed. Furthermore, the substance of the customer's initial complaint had already been made known to Lynch in the course of the Respondent's investigation of her. Since, according to the Respondent, Lynch already possessed (and had actually used) that information in contacting the customer, it is difficult to see how preventing the Union from receiving the portions of the security report and computer note screen that reflect that communication between the Respondent's officials and the complaining customer is essential to effectuating the purposes of the *Anheuser-Busch* policy, i.e., insulating potential witnesses from intimidation and harassment aimed at making them change their testimony or decline to testify at all.[10]

Accordingly, we conclude that the reports made by the Respondent's officials cannot be deemed witness statements in any conventional sense. We find, therefore, that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to furnish the reports of the Respondent's officials regarding conversations with the complaining customer.[11]

AMENDED CONCLUSIONS OF LAW

1. Add the following after paragraph 3 and renumber the subsequent paragraph.

''4. The Respondent, by failing and refusing to furnish the Union with portions of an investigative report and computer note screen related to the discipline of employee Elizabeth Lynch, which reflect conversations between the Respondent's officials and the complaining customer, has failed to bargain collectively with

[7] 237 NLRB 982 (1978).

[8] For example, although the record does not establish the exact contents of the reports, it is possible that they contain the thoughts or comments of the Respondent's officials regarding the customer's complaint. Such material could hardly be deemed a statement of the customer.

[9] Our judgment in this regard is unchanged by the observation of our dissenting colleague that *Square D Electric* and *United Technologies* present clearer instances of employer work product than does the instant case. That observation does not address the question of whether, in the absence of any adoption or even review by the complaining customer of the reports prepared by the Respondent's officials, those reports are more appropriately characterized as a statement by the customer or as employer work product. Our conclusion that the latter is more compelling is made in full recognition of the policies underlying *Anheuser-Busch*.

[10] We do not suggest, as the dissent contends, that since harassment of Jackson has occurred as a result of her initial complaint already known to Lynch, it follows that no privilege should attach to that initial complaint. Rather, preventing the Union from receiving that initial complaint is of little value in effectuating the policies underlying *Anheuser-Busch* since the substance of that initial complaint is already known to Lynch, a union shop steward.

[11] Member Cracraft agrees that the disputed information in this case does not fall within the witness statement exception. Accordingly, she finds it unnecessary to pass on the continued vitality of *Anheuser-Busch* as an exception to the general obligation the Act imposes on an employer to furnish a union, on request, information relevant and necessary to the performance of its duties as bargaining representative.

the Union, in violation of Section 8(a)(5) and (1) of the Act.''

2. Delete paragraph 5.

AMENDED REMEDY

Having found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish the Union with certain requested information, we shall order the Respondent to cease and desist from engaging in such conduct and, on request, to supply the Union with the portions of the security investigative report and computer note screen related to the discipline of employee Elizabeth Lynch, which reflect conversations between the Respondent's officials and the complaining customer.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, New Jersey Bell Telephone Co., Toms River, New Jersey, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 1(b) and reletter the subsequent paragraph.

''(b) Failing and refusing to supply to the Union, Local 1022, Communications Workers of America, AFL–CIO, requested information that is relevant and necessary for the purpose of carrying out its representative function of processing grievances.''

2. Insert the following as paragraph 2(a) and reletter the subsequent paragraphs.

''(a) On request, furnish to Local 1022, Communications Workers of America, AFL–CIO, the portions of the security investigative report and computer note screen related to the discipline of employee Elizabeth Lynch, which reflect conversations between the Respondent's officials and the complaining customer.''

3. Substitute the attached notice for that of the administrative law judge.

MEMBER DEVANEY, dissenting in part.

I agree with my colleagues that the Respondent violated Section 8(a)(1) of the Act by violating employee Lynch's *Weingarten* right to have a union representative present during the investigatory interview conducted by the Respondent's security personnel. I do not agree with the majority, however, that the Respondent violated Section 8(a)(5) of the Act by failing to provide the Union the information it requested in the processing of Lynch's grievance. In this regard, I agree with the judge, for the reasons stated by him, that the statements of Jackson, the complaining customer, as recorded by the Respondent's security personnel, were ''witness statements'' within the meaning of *Anheuser-Busch, Inc.*, 237 NLRB 982 (1978), and were thus privileged from disclosure.[1]

Furthermore, as the judge points out, the harassment and intimidation of witnesses, of which there is evidence in the present case, is precisely the type of evil the *Anheuser-Busch* privilege is intended to prevent. The majority acknowledges that the purpose of the policy of *Anheuser-Busch* is to insulate potential witnesses from harassment and intimidation. Nevertheless, the majority concludes that because Lynch, through the course of the Respondent's investigation, became aware of the substance of Jackson's initial complaint and actually used that information in subsequently contacting Jackson, the policy of *Anheuser-Busch* is inapplicable. In short, the majority suggests that because harassment of Jackson has already occurred, no privilege should attach to Jackson's initial statement. However, the judge's finding that harassment of Jackson has already occurred speaks forcefully for the application of *Anheuser-Busch* here to both Jackson's initial statement as well as to Jackson's additional communication with the Respondent. Accordingly, in agreement with the judge, I would find that Jackson's complaints are witness statements protected from disclosure under *Anheuser-Busch* and that the Respondent did not violate Section 8(a)(5) by failing to provide Jackson's statements to the Union.

[1] The cases relied on by the majority in support of its ''employer work product'' analysis are clearly inapposite. In *Square D Electric Co.*, 266 NLRB 795, 797 (1983), the judge rejected the respondent's argument that the information requested, a video film, was privileged from disclosure under *Anheuser-Busch* as witness statements. In finding that the video film was the property and work product of the company, the judge emphasized that ''the film and photography thereon were not even established to have been the property or work product of any employee.'' In *United Technologies Corp.*, 277 NLRB 584, 589 (1985), also relied on by the majority, the judge found that the reports of the repsondent's own technical experts based on their investigation of x-ray films were not witness statements in any true sense, but ''compilations of technical data by one of [respondent's] own departments.'' Thus, neither case cited by the majority stands for the proposition that reports of statements as here by a customer constitute an employer's work product.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT require that employees participate in interviews or meetings when the employees have reasonable grounds to believe that the matters to be discussed may result in their being disciplined, and where representation at those interviews or meetings has been denied.

WE WILL NOT fail and refuse to supply to the Union, Local 1022, Communications Workers of America, AFL–CIO requested information that is relevant and necessary for the purpose of carrying out its representative function of processing grievances.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, furnish to the Union the portions of the security investigative report and computer note screen related to the discipline of employee Elizabeth Lynch, which reflect conversations between our officials and the complaining customer.

NEW JERSEY BELL TELEPHONE CO.

Gary Carlson, Esq., for the General Counsel.
James Brady, Esq., of Newark, New Jersey, for the Respondent.
Ellen Dichner, Esq. (Gladstein, Reif & Meginniss), of Brooklyn, New York, for the Charging Party.

DECISION

STATEMENT OF THE CASE

STEVEN B. FISH, Administrative Law Judge. Pursuant to charges filed by Local 1022, Communications Workers of America, AFL–CIO (the Union or Local 1022), in Cases 22–CA–15406 and 22–CA–15438, the Regional Director for Region 22 issued complaints and notices of hearings on January 21 and February 5, 1988, respectively, alleging in substance that New Jersey Bell Telephone Co. (the Respondent) violated Section 8(a)(1) of the Act by denying the request of employee Elizabeth Lynch for union representation at an investigatory interview, and Section 8(a)(1) and (5) of the Act by failing and refusing to provide information to the Union which is necessary and relevant to its performance of its collective-bargaining responsibilities.

Subsequently, these cases were consolidated and were heard before me in Newark, New Jersey, on April 5 and 6, 1988. Briefs have been received from the parties and have been carefully considered.

On the entire record including my observation of the demeanor of the witnesses, along with the consistency and probability of testimony, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is a corporation with an office and place of business in Toms River, New Jersey, where it is engaged in the furnishing of telephone communications services. Annually, Respondent derives gross revenues in excess of $100,000, and purchased and caused to be delivered to its Toms River facility goods and material valued in excess of $50,000 directly from suppliers located outside the State of New Jersey. It is admitted and I so find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

It is also admitted and I so find that Local 1022 is a labor organization within the meaning of Section 2(5) of the Act.

II. FACTS

Elizabeth Lynch has been employed by Respondent for 22 years in various positions including senior systems analyst and service representative. She was promoted to service representative in March 1987,[1] at the Respondent's Toms River ''sale demand center.'' In her capacity as service representative, Lynch took orders from customers for new service and changes in service, and dealt with customer complaints.

In connection with her duties, Lynch utilized and had access to a computer support system known as BOSS. This system contains various kinds of information relative to a customers account, such as a history of the account, billing information, order activity, and information relative to nonpublished numbers. Employees who use BOSS, such as Lynch have a distinct readily identification number which they must use when they access an account in the system.

Local 1022 has been the collective-bargaining representative for the Respondent's commercial marketing employees, including service representatives, at various locations, including Toms River, New Jersey. Lynch has been a shop steward for the Union for 3 years. During this period of time in that capacity, Lynch has processed grievances, and discussed union matters with management, but has never represented an employee at an investigatory interview, nor attended an investigatory interview.

In late October, Respondent's security department received a complaint from a customer, Helen Jackson, that she had been receiving ''annoying phone calls.'' Lorraine Vasilik, a security representative, was assigned by her supervisor, Bill Minnick, to investigate the complaint.

A few days later, Vasilik called Jackson on the telephone. Jackson informed Vasilik that she had been receiving annoying phone calls on her nonpublished number, and that she felt that the number had been given out by an employee of Respondent. The record does not disclose whether or not Jackson accused Lynch or any other specific employee of having given out her number. Vasilik wrote out a report of her conversation with Jackson. The report was not typed up, nor was it sent to Jackson to be signed or adopted by her in any way. No assurances of confidentiality were asked for by Jackson or given by Vasilik in connection with Jackson's complaints.

Vasilik at that point accessed the BOSS network, and discovered that three entries were made on September 17 on Jackson's account that did not appear to Vasilik to be legitimate entries. Further inquiry by Vasilik determined that the identification number used for all three of these entries on September 17 belonged to Lynch.

Vasilik contacted Ann Tovey, Lynch's manager, and told her that one of her employees, Lynch had accessed an account, and she wished to interview Lynch about the matter. Tovey then arranged for Lynch's immediate supervisor, Kathy Schlemo to make Lynch available for an interview on November 4.

[1] All dates hereinafter are in 1987 unless otherwise indicated.

At about 10:15 a.m. on November 4, Schlemo instructed Lynch to stop working and to proceed downstairs with her to meet someone. Lynch asked whom she was to meet, but Schlemo replied that she couldn't tell her. Schlemo accompanied Lynch to an empty storage room, and introduced Lynch to Vasilik and Carmine Inteso, another security representative, who was assisting Vasilik. Schlemo then left.

The security representatives then showed Lynch their identification as security representatives, and indicated that they intended to conduct an investigation. Lynch became nervous and upset, and began to ask a series of questions. She asked, what was she there for; why was security there; and what was this all about? Before receiving an answer to any of these questions, Lynch asked if she should have a union representative present. Vasilik responded that Lynch should let her (Vasilik) explain what the interview was about, and then Lynch could ''make that decision.''[2]

Lynch made no response to this comment by Vasilik. Vasilik then explained that she intended to ask Lynch some questions about an account Lynch had accessed. Vasilik did not pause nor ask Lynch whether now that she knew the purpose of the interview, did she wish union representation. Lynch did not insist on union representation after being so informed, because as she testified, ''my mind went blank. I didn't even think of anything. All I could think of was I was going to lose my job.'' Vasilik proceeded immediately to ask for permission to tape the interview. Lynch replied that she preferred that Respondent not do that.

Vasilik then asked some preliminary questions about Lynch's job, her familiarity with BOSS and her user I.D. She then asked Lynch if she ever accessed an account that she was not authorized to. Lynch replied, ''not that I know of.'' Lynch was asked if she knew a Helen Jackson. She replied, ''no.'' Vasilik asked about Linda and Leonard Wilson. Lynch responded that Linda was her niece, Leonard was Linda's husband, and that they were separated.

Next, Vasilik asked if Lynch had ever accessed Jackson's account. Lynch replied that she didn't know. Vasilik showed Lynch a copy of the BOSS note screen for Jackson's account, which included three entries on September 17 with Lynch's I.D. number. Lynch after seeing the screen, admitted that she had accessed the account. Vasilik proceeded to ask Lynch if she had disclosed any information from the account to her niece, Linda Wilson. Lynch replied that she had met Wilson at a store, during which time they discussed Wilson's separation. Lynch continued that in the course of this conversation, Wilson handed her a telephone number, and wanted to know who it was listed for. Lynch responded that she could not give out that information. Wilson then asked if there was some way she could get another number listed for that account. Lynch told security that she initially replied that she couldn't do it, but then relented and agreed to furnish Wilson with the other phone number. Lynch admitted to the security representatives that she subsequently accessed Jackson's account, and gave her niece the teen line telephone number.[3] Lynch added that she did not know how Wilson had obtained the original number.[4]

Vasilik asked Lynch if she knew what she did was wrong? Lynch replied that she knew it was wrong, but it was family and ''she didn't think.'' Vasilik that point proceeded to move on to the ''written'' portion of the interview. The procedure utilized by security agents is to first ask a series of questions and obtain answers in the first part or ''oral'' portion of the interview. They then go on to a second ''written'' portion of the interview, when the questions are repeated, and the answers written in a document entitled ''Voluntary Statement.'' Vasilik went through the questions again, and wrote the answers, essentially as described above in a four-page document, entitled ''Voluntary Statement.'' She asked Lynch if she wished to add anything to the statement.

Lynch read the statement over, and added the following paragraph:

> I made a mistake and obviously I will never do anything like this again. This was such a shock that I cannot believe it is happening. I guess if it wasn't family I would never even have thought of doing such a thing. I have learned my lesson and happily can relate to other employees on the importance of privacy.

Lynch also signed the statement and initialed each page. During the course of the instant hearing, Lynch admitted that she had told the security representatives what appeared in the statement. However she denied that she actually gave her niece the phone number from Jackson's account, asserting that in fact Wilson already had both phone numbers. Lynch did admit that she accessed the account, but claimed that she did so only because she was curious, and insists that she did not disclose any information from the account to Wilson. She claims that although she read the statement before she signed it, she was too upset to observe what she was reading, so she did not point out that the statement was inaccurate when it admitted that she had given Wilson the teen line number.

After Lynch signed the statement, she asked if she was going to lose her job? Inteso replied that he couldn't really be sure of what was going to happen, but he didn't think that she would lose her job. Lynch stated as she was leaving the room that she was glad that there were no union representatives present, because she was very embarrassed over the whole situation.

My findings set forth above with respect to the interview conducted on November 4 is based upon my assessment of the credible portions of the testimony of Lynch, Inteso, and Vasilik, plus the statements given by Lynch to the Board and the security representatives. Overall I found Respondent's witnesses to be the more believable, and have credited their testimony in most of the few areas in dispute. The most significant area of controversy deals with Lynch's remarks about union representation. She testified that after the security representatives introduced themselves and indicated that they were there to conduct an investigation, she said ''I want

[2] Both security representatives testified that they did not consider Lynch's inquiry about whether she should have a union representative present to be a request for such representation. Inteso testified further that in security training that he was given, they are told that questions about whether employees should have representation are not considered to be requests for representation. Inteso further testified that his standard response to such inquiries is that the decision is up to the employee, but he would require the employee to make the decision at the time the question was raised.

[3] A teen line number is separate telephone number that is billed under the main number in a residence. A teen line is so named because that type of service is usually purchased by parents for their teenaged children. These numbers are not listed in the phone book unless the customer pays extra money for the listing.

[4] The original number was apparently an unlisted number. It appears also that Leonard Wilson was renting a room at the residence of Helen Jackson.

union representation.''I do not credit Lynch's testimony in this regard, and I find as outlined above that as testified to by Inteso and Vasilik, she merely asked she ''should have a union representative present?'' I rely primarily on the unrefuted and persuasive evidence of record of Respondent's well-established guidelines for the conduct of security interviews, as well as the past practice of security representatives involved, to grant requests for union representatives when such requests are made in investigatory interviews. I find it improbable that had Lynch made an unequivocal request for union representation as she claims, that it would have been denied. Respondent is a large company with a long history of dealing with unions, and conducting security interviews, during which they routinely grant requests for union representation. There is no indication in the record as to why the security representatives should or would have any reason to deviate from Respondent's established policy in the case of Lynch's interview.

Moreover, Lynch's testimony was frequently evasive and unresponsive, and at times inconsistent with her previous statements.

The next day, November 5, Vasilik called Tovey and reported on the results of the interview. Vasilik informed Tovery that Lynch had admitted that she had accessed a customer's account, disclosed a teen line number from the account to her niece, and signed a statement to this effect.

On November 9 Jackson called Respondent's security department and complained to the manager, a Mr. Polowski about an upsetting phone call that she had received. Polowski notified Vasilik, who called Jackson on November 10 to discuss her complaint. Jackson informed Vasilik that she had received a phone call from Lynch, who allegedly told Jackson that she (Lynch) had been interviewed at her home, and that she was going to lose her job and be criminally prosecuted. Lynch allegedly added that Jackson could be sued for defamation of character.

Vasilik explained to Jackson that it was not true that the interview was conducted at Lynch's home, but it was held on company property, on company time. Vasilik added that Lynch would not be criminally prosecuted, and that she (Jackson) should not worry about any defamation lawsuit.

Vasilik wrote in her own handwriting a report of her conversation with Jackson onNovember 10, and placed it in the security report. Vasilik did not report the contents of this conversation to local management, nor did she interview Lynch about her alleged conversation with Jackson. Vasilik also admitted that ''maybe I didn't take it seriously,'' referring to this complaint.

The security report at that time contained notes of the conversations between Jackson and Vasilik, as well as between Jackson and other supervisors and security representatives. Additionally the report contained Lynch's statement given to the security representatives, plus the note screen of Jackson's account shown to Lynch during the course of the interview. Vasilik did not send a copy of the security report to local management.

On November 16, Tovey prepared a memo, reporting on her conversation with Vasilik regarding the Lynch situation. The memo indicated that a customer had complained about calls made to her additional line, and that the security investigation determined that Lynch had accessed the account three times in 1 day. The memo further stated that Vasilik had interviewed Lynch on November 4, during which time Lynch signed a statement admitting that she had accessed the account and gave the additional line number to her niece. The memo concluded that Lynch was cooperative during the investigation and that she stated she never did anything like this before and had no idea that her niece would annoy the customer.

The memo was sent to Jack Van Houtte, director of business services for Respondent. According to Van Houtte he concluded based solely on the memo that he received from Tovey, that Lynch had breached Respondent's code of conduct, and that a 5-day suspension was warranted. After consulting with Labor Relations, Van Houtte wrote on the bottom of the memo, ''11/18. 5 Day Suspension, Advised Ann Tovey.'' On November 18, Van Houtte in fact notified Tovey of his decision.

Tovey called Lynch into her office later in the day on November 18. Tovey began by indicating that she was ready to give Lynch a decision on her discipline, and asked her if she wanted union representation. Lynch replied that the union knows nothing about the matter, and asked to discuss it with Tovey. Lynch explained to Tovey that although her niece had asked her for the number she had not in fact given it to her niece. Lynch added that she had a notarized letter from her niece, indicating that Lynch had not disclosed the number to her.

Tovey asked if Lynch had signed a statement admitting that she had given out the number. Lynch conceded that she had, but claimed that she was under duress and didn't know what she was doing. Tovey then brought up the note screen and Lynch's having accessed the account three times. Lynch's explanation for this was, ''maybe I wanted to know where he lived.'' Tovey then suggested that Lynch talk to security again. Lynch agreed, but security refused to conduct another interview, because Lynch had signed a statement admitting her actions.

Tovey after checking with security, informed Lynch that security would not reinterview her, and she (Tovey) was prepared to administer discipline. At this time Lynch asked for union representation. Chief Shop Steward Hope D'Amato was called in along with Kathy Schlemo. Tovey explained that Lynch had been interviewed by security, and had admitted accessing a customer's account and disclosing to her niece a nonpublished number, so her niece could contact her estranged husband. Tovey added that Lynch's conduct violated Respondent's code of conduct by giving out proprietary information, and she would be suspended for 5 days. Lynch made no comments, but D'Amato replied that the Union intended to grieve the suspension.

After the meeting, Lynch met privately with D'Amato. Lynch explained to D'Amato that although she had admitted to security in her statement that she had disclosed the phone number to her niece, that she in fact had not done so. She added that she had a notarized statement from her niece indicating that her niece had in fact obtained the phone number from other sources, and not from Lynch. Lynch also informed D'Amato that she had not notified the Union prior to November 18 about the problem, because she was ''embarrassed.''

The next day, D'Amato asked Tovey for a copy of the statement given by Lynch to security. A copy of the statement was given directly to Lynch by Tovey on that day.

In late November, the Union filed a grievance concerning Lynch's suspension. Within the next few days, D'Amato showed Lynn Buckley, the union president a copy of Lynch's statement.

In a letter to Van Houtte dated December 7, Buckley wrote, ''In order to process the grievance for Liz Lynch regarding her 5 day suspension, I need security's investigative report, including a copy of the note screen of the account that Liz was alleged to have accessed.''

Buckley testified that she needed the information in order to determine why security had become involved in the case, and whether or not a customer made a complaint to Respondent. She asserts that the burden of proof that Lynch gave out a number falls on Respondent, and since Lynch has contended she was coerced into making admissions in her statement, she (Buckley) needs to see the entire security investigative report plus the note screen.

Respondent determined that they would supply the Union with a copy of the note screen, but would not turn over the security investigative report, because it was considered ''confidential.'' Vasilik in assessing the Union's request, believed that it was only directed towards the portion of the note screen that showed that Lynch accessed Jackson's account. This information was contained on page two of the note screen, which she forwarded to Tovey for distribution to the Union. Page one of the note screen contains nonpublished phone numbers, the customers name, various types of billing information, service order activity, including changes in phone numbers, and references to attempts to contact and conversations between security and supervisors with the customer. Vasilik testified that she did not believe at the time that the Union was seeking the information contained on this page, or that the Union needed such information, since this page ''had very little bearing on it.'' Vasilik did not inform Tovey or Van Houtte that she was only furnishing one page of the note screen.

On December 14, Buckley and D'Amato met with Van Houtte and Tovey to discuss the Union's grievance filed on behalf of Lynch. Buckley asked Van Houtte for the information contained in her letter. Van Houtte gave her page two of the note screen.[5] Buckley asked about the security report that she had requested. Tovey replied that security had informed her that the security report was private and confidential, and it would not be given to the Union. Buckley responded that the Union intended to go to the NLRB to obtain that information. Van Houtte responded that its very expensive to do that. Buckley told Van Houtte ''that's really none of your business.''

Buckley then asked if a customer complaint had been made to Respondent that initiated the investigation. Van Houtte answered that he was not sure, but a customer had probably called to complain about annoying phone calls. Buckley explained that based on her experience, if a customer made such a complaint, it should appear on the note screen, and that therefore the note screen furnished to her was incomplete. Buckley asked if she could obtain this information. Van Houtte responded that he would try to find out if there was any more information on the screen and or whether or not he could obtain any information about initiation of the complaint that triggered the investigation.

Subsequently Respondent's officials decided that they would not furnish to the Union any information about how the complaint originated, or supply it with the first page of the note screen. Vasilik testified that she did not feel that the Union had any need to see the first page. She believed that the Union had the second page and that showed that Lynch had accessed Jackson's account, and it had no need for the first page. She added that the first page contains proprietary information such as billing information and nonpublished phone numbers. Moreover as to information on the page of the screen with respect to calls between the customer and supervisors, she deemed that information to be ''confidential.''

In late December, Vasilik completed her security report and submitted it to her supervisor. The report contains the following items: (1) a document entitled request for security assistance; (2) notes taken by a security representative; (3) a nonpublished phone number; (4) a note screen; (5) request for a copy of the statement taken from Lynch; (6) request for a copy of the note screen; (7) request to examine personnel records; (8) transmittal of data. Included in the report, are reports of conversations between supervision and the customer, as well as conversations between Vasilik and the customer.

Vasilik testified that when the request was received for the furnishing of the report to the Union, she discussed the matter with her supervisor, Mr. Minnick. He agreed with her that the report should not be disclosed to the Union, in part because, ''in there; there's conversations that I had with the customer, what I consider informant sources.''

On January 4, 1988, Buckley telephoned Van Houtte, and asked about the additional information, abut which he was supposed to get back to her. He replied that security would not allow the Union to have any further information on the note screen or about the origination of the customer complaint. Buckley responded, ''I'll have to go where I'll have to go.''

Respondent and the Union are holding the grievance filed on Lynch's behalf in abeyance, pending the decision herein.

IV. ANALYSIS

A. *Respondent's Alleged Denial of Lynch's Request for Union Representation*

An employee has the protected right to union representation at an investigatory interview which the employee reasonably believes may result in disciplinary action. *NLRB v. J. Weingarten*, 420 U.S. 251 (1975); *Montgomery Ward & Co.*, 273 NLRB 1226, 1227 (1984). However such a ''right arises only in situations where the employee requests representation.'' *Weingarten*, supra at 257. *Appalachian Power Co.*, 253 NLRB 931, 932–933 (1980); *Pick-N-Pay Supermarkets*, 247 NLRB 1136, 1138 (1980); *Montgomery Ward*, supra.

When an employer is presented with such a request, it must either grant the request, present the employee with the option of continuing the interview unrepresented or forgoing the interview altogether, or deny the request and terminate the interview. *Montgomery Ward*, supra; *Consolidated Freightways Corp.*, 264 NLRB 541, 542 (1982); *General*

[5] At that time neither Tovey nor Van Houtte realized that another page to the note screen existed.

Motors Co., 251 NLRB 850, 857 (1980); *Lennox Industries*, 244 NLRB 607, 608 (1979).

In applying the above principles to the facts herein, the only significant issue in dispute, is whether Lynch made an adequate request for union representation. In making such determination, the test is whether the statements made by Lynch, here her question whether she should have union representation was sufficient to put Respondent on notice of her desire for union representation. *Southwestern Bell Telephone Co*., 227 NLRB 1223 (1977); *NLRB v. Illinois Bell Telephone Co*., 674 F.2d 618, 622 (7th Cir. 1982), *Montgomery Ward*, supra at 1227.

Although phrased in terms of a question, inquiries virtually identical or similar to those made by Lynch have uniformly been held to be sufficient to put the Employer on notice as to the employees' desire for representation. *Illinois Bell Telephone Co*., 251 NLRB 932, 938 (1980), affd. 624 F.2d 618 (7th Cir. 1982) (question by employee, if she should have someone present from the union); *Southwestern Bell*, supra at 1227 (question whether employees should obtain representation. The Board held that while that inquiry was not as forthright as another employee's request that ''he would like to have someone there that could explain to me what was happening,'' it was nonetheless ''sufficient to put the Employer on notice as to the employee's desires'' Id. at 1223); *Bodolay Packaging Machinery*, 263 NLRB 320, 325–326 (1982) (question by employee if he need a witness); *Postal Service*, 256 NLRB 78, 80–82 (1981) (employee asked if he needed his union representative).

Respondent cites no authority for the proposition that Lynch's inquiry is not a sufficient request, but instead attempts to distinguish *Illinois Bell*, supra, and presumably the other cases cited above, by focusing on the Employer's responses. Thus Respondent notes that the security representative in *Illinois Bell* in response to the inquiry about union representation, replied, ''no, it is not necessary as long as you are honest with me.'' Thus Respondent argues that such a response amounts to a denial of union representation, unlike the reply made by Vasilik that Lynch should wait until she (Lynch) finds out what the interview was about and then decide. I find Respondent's attempt to distinguish *Illinois Bell*, as well as the other cases cited above, unpersuasive.

Contrary to Respondent's contention, the focus and rationale of the decisions in *Illinois Bell*, supra, as well as the other cases cited above, was not whether the employer specifically denied the request, but whether the request was sufficient in the first instance. Having so found, it does matter whether Respondent made a comment which constituted a denial of such request. Once an adequate request has been made, as it was here by Lynch, Respondent has but three options as outlined above. It can grant the request, discontinue the interview, or offer Lynch the choice of meeting with a representative, or of no meeting at all. *Consolidated Freightways*, supra; *Montgomery Ward*, supra; *Lennox Industries*, supra. Respondent cannot lawfully continue with the interview as it did here, unless Lynch voluntarily agreed to be represented after having been presented with the above choices. *Postal Service*, 241 NLRB 141 (1974); *General Motors*, supra. Since it failed to present such choices to Lynch, its conduct in proceeding with the interview is violative of the Act. Indeed as I found in *Illinois Bell*, supra, ''having concluded that the statement by Wimberly was a timely request for representation, I must also conclude that Lawske was not at liberty to proceed until union representation was provided; or unless other and further statements or events evidenced a clear and unambiguous waiver on Wimberly's part to go it alone.'' Id. at 938.

Respondent argues however, that Lynch's conduct herein does evidence such a clear waiver of her *Weingarten* rights. Respondent contends in effect, that the appropriate time for making a request for union representation occurred only after Lynch knew the purpose of the interview, and that her actions in proceeding with the interview without making any request subsequent to being so informed, constitutes awaiver of her *Weingarten* rights. I do not agree.

Respondent has supplied no authority for its assertion, that only after the purpose of the interview is known, can a valid request be made. On the contrary, Board law is clear that once a valid request for union representation is made, as here, the employee need not repeat the request again. *Consolidated Freightways*, supra at 541; *Lennox Industries*, supra at 608. There can be no question that Lynch had a reasonable fear of discipline, by virtue of her being ushered into a strange room by her supervisor, and introduced to security representatives who told her they were conducting an investigation. It is not the province of Respondent to decide for the employee that she should wait to decide whether or not to exercise her *Weingarten* rights until Respondent explained the purpose of the interview. Lynch chose to request union representation in a timely fashion, and Respondent cannot as it did here, attempt to dissuade[6] her from exercising her rights, by suggesting she postpone her decision.

Respondent also argues that Lynch's entire conduct herein establishes that she did not want union representation. It relies heavily on Lynch's comments at the end of the interview that she was glad that there were no union representatives present because she was very embarrassed over the whole situation. I find this remark to be of scant significance in assessing either the validity of Lynch's initial request, or in establishing that she waived her rights by participating in the interview. At that point in the interview, Lynch had already confessed to violating Respondent's rules, and had expressed to the security representatives a legitimate fear of losing her job. The security representatives could not and did not assure her that her job was not in jeopardy. Thus her comments that she was glad the Union was not present because she was embarrassed, should be viewed as no more than a desperate attempt by Lynch to curry favor with Respondent's representatives in the hopes of saving her job. By no stretch of the imagination can this comment made at the end of the interview be construed as sufficient to meet the Board's stringent standards for the waiving of statutory rights. See *Keller-Crescent Co*., 217 NLRB 685, 687 (1975); *Postal Service*, supra, 256 NLRB at 80–81; *Southwestern Bell*, supra at 1223.

[6] Vasilik admitted that it is more difficult to obtain a statement from an employee when union representatives are present and that she knew of the Union's policy to advise members not to sign statements. Thus Vasilik clearly believed that her task in obtaining information from Lynch would have been easier, if she did not have union representation. I find that Vasilik's request that Lynch defer the decision on union representation, coupled with her subsequent failure to permit Lynch adequate time to make such a decision, to be an attempt to dissuade Lynch from opting for a union representative.

Indeed the Board's language in *Southwestern Bell*, supra, is particularly appropriate herein. In evaluating an inquiry by employees whether they should obtain union representation, the Board as noted found them to ''be sufficient to put the Employer on notice as to the employees' desires.'' Id. at 1223. The Board then observed, ''*Weingarten* does not require that after having made his request an employee must remain adamant.''

In addressing the waiver issue, the Board added:

> Finally, we cannot conclude that the employees waived their right to representation. Here it is particularly important because of the ''mischief to be corrected and the end to be attained'' (footnote omitted) that we carefully scrutinize any claim that employees have waived their guaranteed right. Put another way. ''Before inferring that a waiver has occurred . . . the Board must assure itself that the employee acted knowingly and voluntarily. The right being waived is designed to prevent intimidation by the employer. It would be incongruous to infer a waiver without a clear indication that the very tactics the right is meant to prevent were not used to coerce a surrender of protection.''
>
> As the administrative law judge noted, the Supreme Court said in *Weingarten*, ''a single employee confronted by an employer investigating whether certain conduct deserves discipline may be too fearful or inarticulate to relate accurately the incident being investigated or too ignorant to raise extenuating factors.'' [Footnote omitted.] To conclude that an employer may play upon these fears to dissuade an employee from remaining firm in his request would defeat the right *Weingarten* protects. [Id. at 1223.]

Here, Vasilik in investigating Lynch's conduct, confronted an employee who was admittedly fearful and upset,[7] and she played upon these fears to dissuade Lynch from remaining firm in her representation request. Thus rather than granting Lynch's request, or giving her the prescribed options, or even compelling Lynch to make up her mind immediately as to whether she wished representation,[8] Vasilik suggested that Lynch postpone the decision until the purpose of the interview was explained to her. Then to compound the error, after Vasilik explained the purpose of the interview, she did not even pause to permit Lynch to consider whether to renew her previously expressed request, but moved forward immediately to commence the interview. Thus Vasilik in my view misled Lynch into believing that once the purpose of the interview was explained to her, she would have an opportunity to decide whether she wants representation, before the interview proceeded. Not only did Vasilik not ask Lynch at that point whether she now wished union representation or not, but charged ahead without even a hesitation to interrogate Lynch about the matters under investigation. It seems to me that in these circumstances, in order to establish a knowing waiver, Vasilik would have had at a minimum to expressly ask Lynch, once the purpose was explained, whether she now wished to have the union representative present that she had previously inquired about.

Vasilik instead proceeded with the interview, without as much as a pause to permit Lynch to make a decision, that Vasilik had suggested to her that she would be able to make.

Accordingly, I conclude that Respondent has by failing to grant Lynch's request for union representation, and proceeding with the investigatory interview, deprived her of her rights under *Weingarten* and has violated Section 8(a)(1) of the Act.

B. *The Request for Information*

It is well settled that an employer has a duty to provide, upon request to the Union, information which is relevant to the Union in carrying out its duties and responsibilities. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967), *Pfizer, Inc*., 268 NLRB 916, 918 (1984), enfd. 763 F.d 887 (7th Cir. 1985). These responsibilities ''include'' the administration of a contract or the processing and evaluation of a grievance. *United Technologies Corp*., 274 NLRB 504, 506 (1985); *Conrock Co*., 263 NLRB 1293, 1294 (1982). The standard for determining whether information is relevant to the Union's legitimate collective bargaining need is a liberal discovery type test. *Leland Standford Junior University*, 262 NLRB 136, 139 (1982); *Dahl Fish Co*., 279 NLRB 1084, 1102 (1986). In this regard information must be furnished that is of even probable or potential relevance to the Union's duties. *Pfizer*, supra; *Conrock*, supra; ''Under the Federal Rules of Civil Procedure governing discovery, 'relevancy is synonymous with germane'; and a party must disclose information if it has any bearing on the subject matter of the case.'' *Detroit Newspaper Union Local 13 v. NLRB*, 598 F.2d 267, 271 (D.C. Cir. 1979); *Pfizer*, supra. The information requested must bear upon the Union's determination to file a grievance or be helpful in evaluating the merits of the grievance and the propriety of pursuing the grievance to arbitration. *United Technologies*, supra.

In applying the above principles to the instant facts, it is first necessary to determine the ''potential or probable'' relevance of the Union's request for Respondent's investigative report and the missing portion of the note screen. Buckley testified on behalf of the Union that she needed the above items in order to properly evaluate Lynch's grievance. She asserts that she wishes to know whether a customer complaint was received by Respondent which initiated its investigation into Lynch's conduct, as well as what information Respondent obtained from the customer during the course of its investigation.

Respondent argues, however, that the Union does not need any of the information which it seeks, since it already has all the information before it that Respondent relied upon is suspending Lynch. Thus it asserts that the record discloses that Respondent suspended Lynch based upon Lynch's admissions contained in her statement given to security, as well as page two of the note screen which showed that Lynch had accessed the customer's account. Since the Union has been furnished these items, and additionally is aware of the name of the complaining customer as well as her telephone number, Respondent contends that the Union needs no further information to properly represent Lynch. I find Respondent's position in this regard to be without merit.

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[7] It is not significant in this connection that Lynch was a shop steward. *Consolidated Freightways*, supra at 542; *General Motors Co*., 251 NLRB 850, 857–858 (1980).

[8] I note that Inteso testified that his practice when such inquiries are made is to compel the employee at the time to decide if he or she wishes union representation.

It is not the province of Respondent to decide what information the Union needs to properly evaluate the merits of Lynch's grievance.

> That notion is inconsistent with a Union's right to evaluate relevant information while deciding whether to pursue the grievance at all. [Footnote omitted.] Also, a union has the right and responsibility to frame the issues and advance whatever contentions it believes may lead to the successful resolution of a grievance. It follows that a defending employer may not limit the theories that a union wishes to pursue by denying information to the Union, as Respondent has attempted to do here. *Conrock*, supra at 1894. Accord: *United Techologies*, supra at 508; *Pfizer*, supra at 918; *PPG Industries*, 255 NLRB 296 (1981).

Here, regardless of what Respondent asserts that it relied on in deciding to suspend Lynch, it is conceivable that the information sought by the Union could contain material which could tend to exculpate Lynch.[9] Additionally it could contain information that tends to support Respondent's decision, which may induce the Union not to pursue the grievance any further. In either case the Union's request and the reasons given by Buckley, clearly meet the liberal discovery type tests for relevance asset forth in the above cited cases.

Thus I conclude contrary to Respondent's contention, that page one of the note screen, as well as the investigative report, insofar as they reflects conversations and contacts between Jackson and Respondent's officials dealing with her complaint and its initiation, does constitute information relevant[10] to the Union's performance of its collective-bargaining responsibilities.

However such a finding is not dispositive of Respondent's obligation to furnish the requested information to the Union. In *Anheuser-Bush, Inc*., 237 NLRB 982 (1978), the Board created an exception to the general obligation to provide information, as follows:

> We, of course, recognize and continue to adhere to the *Acme* principle that Section 8(a)(5) of the Act imposes on an employer the ''general obligation'' to furnish a union, upon request, information relevant and necessary to the proper performance of its duties as bargaining representative. Witness statements, however, are fundamentally different from the types of information contemplated in *Acme*, and disclosure of witness statements involves critical considerations which do not apply to requests for other types of information. We do not believe that the principle set forth in *Acme* and related cases dealing with the statutory obligation to furnish information may properly be extended so as to require an employer to provide a union with statements obtained during the course of an employer's investigation of employee misconduct. [Footnote omitted.]
>
> Requiring prearbitration disclosure of witness statements would not advance the grievance and arbitration process. In this regard, we note particularly the recent opinion of the Supreme Court in *N.L.R.B. v. Robbins Tire Company*, 98 S.Ct. 2311 (1978). The issue before the Court in that case was whether the Freedom of Information Act (FOIA), 5 U.S.C. Sec. 552, required the Board to disclose, prior to a hearing on an unfair labor practice complaint, statements of witnesses whom the Board intended to call at the hearing. In determining that the FOIA does not require the Board to disclose such statements, the Court discussed the potential dangers of their premature release, including the risk that ''employers, or in some cases, unions will coerce or intimidate employees and others who have given statements, in an effort to make them change their testimony or not testify at all.'' 98 S.Ct. at 2325. The Court also expressed concern that witnesses may be reluctant to give statements absent assurances that their statements will not be disclosed at least until after the investigation and adjudication are complete. 98 S.Ct. at 2325. In *Robbins Tire*, the narrow issue before the Supreme Court was whether production of witness statements taken by Board would ''interfere with enforcement proceedings'' within the meaning of Exemption 7(a) of FOIA, 5 U.S.C. Sec. 552(b)(7)(A). We, however, believe that the same underlying considerations apply here and that requiring either party to a collective bargaining relationship to furnish witness statements to the other party would diminish rather than foster the integrity of the grievance and arbitration process. [237 NLRB at 984.]

The Board after discussing some of the specific facts present in *Anheuser-Bush*, which indicated that the union's efforts to investigate the grievance had not been impeded by respondent, nonetheless concluded with particularly broad language.

> In any event, without regard to the particular facts of this case, we hold that the ''general obligation'' to honor requests for information, as set forth in *Acme* and related cases, does not encompass the duty to furnish witness statements themselves. [Id. at 984, 985.]

Respondent argues that the material in dispute, herein, i.e., information with respect to conversations between the customer and Respondent's officials, constitute ''witness statements'' under the rationale of *Anheuser-Bush*, and privileges Respondent to deny furnishing such information to the Union.

The General Counsel and Charging Party contend that *Anheuser Bush* has been and should be narrowly construed, and that the items in dispute are not ''witness statements'' under the holding of *Anheuser Bush*, and must be disclosed to the union. They rely principally on *Roadway Express*, 275 NLRB 1107, 1112 (1985), which they contend contains an ''implicit'' finding (the General Counsel) or an adoption by

[9] For example it is possible that the report of Jackson's conversations with Vasilik could reveal that Jackson knew that Wilson already had the teen line number that Respondent asserts that Lynch disclosed to her.

[10] Page one of the note screen also contains various other items such as nonpublished phone numbers, billing information and service activity, which Respondent asserts is ''confidential'' and prohibited from disclosure by tariffs issued by the New Jersey Board of Public Utilities. I need not consider this contention, since it is clear from Buckley's testimony that the Union is not seeking any of these items and was interested in seeing page one of the note screen only to the extent that it may reflect the initial complaint from Jackson that began the investigation. Additionally the security report contained various items such as Lynch's statement and page two of the note screen, which the Union already has been furnished. Thus the only relevant material in the report not turned over to the Union was reports of Jackson's conversations with Respondent's supervisors and security representatives.

the Board of the administrative law judge's finding (Charging Party) that a letter from a customer to an employer criticizing an employee is not a ''witness statement'' under *Anheuser Bush*. While I agree that the facts in *Roadway Express* do closely resemble the matters in dispute herein, I cannot agree that the decision in *Roadway Express* can be construed as persuasive authority.

It is true that the administrative law judge considered the issue of whether the letter constituted a ''witness statement.'' It is also true that the judge concluded that it was not. She reasoned, ''[the] *Anheuser Bush* case dealt with substantive policy considerations regarding the disclosure of witness statements and the impact of such on the integrity of the grievance and arbitration process. Here, aside from Respondent's bald assertion,there is no evidence that the SEWCO letter is analogous to a witness statement.'' 275 NLRB at 1112.

However what Charging Party and the General Counsel conveniently ignore is the judge's next comment that ''even assuming that it should be so treated, the issue here is not one of whether Respondent should be required to disclose the letter to the Union, for Respondent has already done so. Rather, the question is one of mechanics whether the letter is to be hand copied or photocopied. According, I conclude that in the circumstances herein, Respondent cannot avail itself of the witness statement exclusion.''

Thus the judge's comments with regard to *Anheuser Bush* are at best dicta since it is clear that the real issue in *Roadway Express* was the question of the form in which the information must be supplied, and not whether it must be turned over.

Moreover, the Board reversed the judge's decision, concluding that respondent need not photocopy the letter, and dismissed the complaint. There was no mention at all in the Board's decision, or the dissent, of the *Anheuser Bush* problem, further demonstrating that the sole issue in the case was the question of whether respondent satisfied its bargaining obligations by offering to permit the union to examine the letter. Indeed it is not even clear whether exceptions were filed to the judge's findings with regard to the *Anheuser Bush* contention. Therefore I cannot conclude that *Roadway Express* provides significant support to the Charging Party and the General Counsel's position with regard to the question of what constitutes ''witness statements'' under *Anheuser Bush.*

There have been on the other hand a number of other cases, where the Board has affirmed administrative law judges' decisions dealing directly with *Anheuser Bush* questions, which have construed the ''witness statement'' exclusion narrowly. These cases include, *PPG Industries*, 255 NLRB 296, 297 (1981) (rating sheets on employees performance prepared by supervisors); *Square D Electric Co*., 266 NLRB 795, 797 (1983) (video film taken by company allegedly showing employees stealing); *United Technologies Corp*., 277 NLRB 584, 589 (1985) (written statements made by supervisors and employees inspected x-ray films that grievant had worked on, which reported on grievant's errors, as well as their opinion as to whether the errors were deliberate); *Facet Enterprises*, 290 NLRB 152 (1988) (statements from mainly supervisors and guards, but also from some employees, pertaining to alleged picket line misconduct of employees).

However, there also exists a number of other cases, where the Board has affirmed administrative law judges' decisions that broadly construed and followed *Anheuser Bush*, and where the Board itself in various contexts has followed the principles of the case. These cases include: *American Telephone & Telegraph Co*., 250 NLRB 47 (1980) (Board deleted from order of ALJ the furnishing of witness statements from security personnel and other unspecified individuals with regard to the conduct of the employee); *Conoco Chemicals Co*., 275 NLRB 39 (1985) (statements given by employee witnesses to employer that employee was ''not in early'' when he allegedly falsified overtime records); *Whirlpool Corp*., 281 NLRB 17, 24 (1986) (furnishing of a confidential police informant (CPI) to the union for examination at a prearbitration supervision hearing); *Certainteed Corp*., 282 NLRB 1101 (1987) (statements from security guards with respect to picket line misconduct.); *Crestfield Convalescent Home*, 287 NLRB 328 (1987) (statements by employees and patients as to employee misconduct).

Since the factual situations in these cases are all significantly different from the facts herein, and indeed different from case to case, it becomes necessary to examine the reasoning and rationale of these decisions, as well as of course *Anheuser Bush* itself, to determine the applicability of that precedent to the information sought by the union in the instant matter. Upon reading *Anheuser Bush*, it is obvious that the basis for the decision to create an exception to the requirement that clearly relevant information be furnished to the Union, is the possibility of intimidation of witnesses. See *Anheuser Bush* at 984, where the Board quoting from *Robbins Inc*., pointed to the risk that ''employers, or in some cases, unions will coerce or intimidate employees and other who have given statements, in an effort to make them change their testimony or not testify at all.'' The Board felt that similar considerations apply to the furnishing of the witness statements obtained during the course of an employer's investigation of employee misconduct which would in its view ''diminish rather than foster the integrity of the grievance process.'' Id.[11]

A close reading of the various cases cited above, interpreting *Anheuser Bush*, tends to confirm that the possible intimidation of witnesses appears to be the key factor in assessing whether *Anheuser Bush* privileges disclosure of the material involved.

Thus in comparing *Facet Enterprises*, supra, and *Certainteed Corp*., supra, they appear at first glance to be completely inconsistent decisions. Thus both decisions deal with statements obtained by the employers about picket line misconduct of employees. In *Certainteed*, supra, the statements were given by security guards and a''Quality Circle Facilitator''[12] employed by the employer. In *Facet* the statements were given by employees, security guards, and supervisors. The administrative law judge in *Certainteed* interpreted *Anheuser Bush* broadly, and rejected the General Counsel's argument that statements from trained security personnel do not have the potential danger of intimidation. He noted in fact that there was evidence that one of the employ-

[11] See also *Columbus Products Co*., 259 NLRB 220, 222 (1981); *Square D*, supra at 797.

[12] It is not clear whether that individual was a supervisor.

ees involved in the misconduct had in fact engaged in intimidating conduct toward one of the security guards.

The administrative law judge, in *Facet* on the other hand, found *Anheuser Bush* not controlling, because as he viewed it the ''information was derived for the most part from its own representatives, supervisors, and agents (rather than employees).'' Id. While the judge therein did not expressly say so, he apparently viewed the possibility of intimidation of witnesses to be remote, where security guards, and supervisors had given the statements.

Furthermore, in *United Technologies*, supra as noted, the administrative law judge concluded that statements given by employees and supervisors about their evaluation of films inspected by the grievant were not witness statements under *Anheuser Bush*. Indeed in that case, the employer had in fact characterized these statements itself as ''witness statements,'' but the judge concluded that they were essentially ''compilations of technical data.'' 277 NLRB at 589. He added that the rationale of *Anheuser Bush* does not cover the situation therein, because ''the nature of the information contained in them is such that their disclosure cannot result in recantation or modification of the facts stated in them by reason of intimidation of the investigators who furnished the statements or anyone who might be named in the statements. They did not investigate incidents. They investigated pieces of film. No amount of intimidation can change what is on that film.'' Id.

Similarly in *Square D*, supra, where the issue of turning over a video film of employee misconduct was considered, that administrative law judge referred to the risk of intimidation of witnesses as being the key to *Anheuser Bush*. He concluded, however, that the video film was the property and work product of the employer, and not of any employee. He therefore refused to apply the *Anheuser Bush* exception, at least inferentially concluding that the absence of the risk of intimidation was significant.

Additionally, in *Whirlpool*, supra, the question of furnishing a CPI (police informer) to the union for examination was discussed. I note in that case, the employer had historically provided such witnesses to the union for examination at a prearbitration hearing. Nonetheless the judge found *Anheuser Bush* precluded the ordering of the furnishing of the witness as part of the obligation to supply information. He concluded after discussing the intimidation question, and the rationale of *Anheuser Bush*, that ''there is a parallel between handing over a written statement, as in *Anheuser Bush*, and handing over an employee to make a written or oral statement.'' 281 NLRB at 24 and 25. The judge although conceding that the possibility of intimidation may not be high, since the CPI was not an employee of the employer and lived elsewhere, nonetheless felt constrained to apply *Anheuser Bush*. He reasoned that ''in *Anheuser Bush*, the Board painted with a broad gauged brush in inaugurating the 'written statements' exception to the information obligation, displaying a desire to proclaim a clear, simple, and all encompassing rule rather than one which entails detailed examination and balancing of all the particular facts.'' Id. at 25.

Finally, it is appropriate to consider *Conoco*, supra. There as noted the Board reaffirmed *Anheuser Bush* in concluding that ''witness statements'' of employees to another employee's misconduct need not be provided, but considered further the question of the turning over the names of witnesses. The case arose in the context of a summary judgment request by the General Counsel. There was no dispute as to the general obligation to turn over to the union the names of witnesses to employee misconduct.

Thus in *Transport of New Jersey*, 233 NLRB 694 (1977), the Board ordered in another summary judgment proceeding, the employer to turn over to the union, themes and addresses of witnesses to an accident involving a bus driver who was disciplined for his conduct in such an accident. The Board rejected the contention of the employer that divulging the names of witnesses to the union would expose them to unnecessary harassment and improper conduct. The Board found, ''in our view, the dangers suggested by Respondent are at most speculative and the likelihood of their occurrence is substantially outweighed by the Union's need to obtain information relevant and necessary to the proper performance of its statutory function of processing grievances.'' (Footnote omitted.) 233 NLRB at 695.[13]

In any event, the employer in *Conoco* contended that evidence of past conduct of the union and its members demonstrated that if identified, its witnesses would be threatened and coerced by the union or by the grievant. The Board concluded that although respondent's evidence is not conclusive with regard to ''a present danger of witness harassment,'' the claim and supporting evidence do raise factual issues with serious ramifications. Thus the Board observed that ''should the likelihood of witness coercion be established at the hearing, the necessity and relevance of the requested information would require further inquiry.'' 275 NLRB at 40. Therefore, even in the case of the names of witnesses, which *Anheuser Bush* affirmed generally must be produced, the likelihood of witness harassment could warrant a different result.

Accordingly, I conclude that although the post-*Anheuser Bush* cases are not a model of clarity, and are at times inconsistent,[14] one factor which seems to be most significant in determining the applicability of *Anheuser Bush* to the specific information involved is the possibility of witness intimidation or harassment. In assessing the instant case, pursuant to such a standard, it is apparent that such intimidation and harassment is not only possible, but has actually occurred. Thus it appears that Jackson, a customer of Respondent registered a complaint about annoying phone calls, which initiated Respondent's investigation. This investigation, which included conversations between its supervisors and security representatives with Jackson (the information that the union is seeking herein), continued with Respondent conducting an investigatory interview with Lynch, which ultimately resulted in Lynch signing a statement confessing to disclosing Jackson's teen line number to her (Lynch's) niece.

Shortly after the interview, Respondent was informed by Jackson, that Lynch had spoken to her on the telephone. According to Jackson, Lynch told Jackson that she (Lynch) had been interviewed at her home, that she was going to lose her job and be criminally prosecuted, and added that Jackson

[13] I note that *Anheuser Bush* specifically affirmed the finding in *Transport of New Jersey*, supra, that an employer does have a duty to turn over to the union the names of witnesses to an incident for which the employee was disciplined. (Fn. 5.) I must confess that I am somewhat troubled by the Board's failure to explain in *Anheuser Bush* why the speculative nature of the dangers of harassment are greater in the case of the furnishing of the witnesses statements than in the case of the turning over names of the witnesses to the union.

[14] See, i.e., *Facet*, supra, and *Certainteed*, supra.

could be sued for defamation of character.[15] This is precisely the type of witness harassment and intimidation that *Anheuser Bush* seeks to prevent. Thus we have here, unlike even *Anheuser Bush* itself or any other subsequent case that I have seen, direct evidence that a witness who furnished information to the employer, in connection with an investigation of employee misconduct, has been harassed and in fact threatened in an obvious attempt to persuade her to withdraw her complaint or to ''change their testimony or not testify at all.'' *Anheuser Bush* at 984. The General Counsel and Charging Party argue, in this regard, that Respondent's expressed concern for the protection of the witness is misplaced and inappropriate, since it already has disclosed to Lynch Jackson's name and phone number during the investigatory interview. I do not agree.

While it may not have been feasible for Respondent to conduct the interview without revealing Jackson's name and number, it does not follow that Respondent is therefore obligated to also furnish reports of Jackson's conversations with its officials. Indeed as noted above, Respondent is obligated under the law to furnish to the Union upon request, the name of the complaining witness. *Transport of New Jersey*, supra. While it is true that the disclosure of this information could, and in fact did, result in Jackson being harassed, additional harassment or intimidation might conceivably result from the disclosure to the Union and or to Lynch of the contents of Jackson's statements to Respondent's officials.

Therefore, I conclude that the evidence of actual intimidation and harassment of Jackson by Lynch herein is the controlling factor in persuading me that *Anheuser Bush* is applicable herein, and prevents the disclosure to the Union of any additional information relating to Jackson's initiation of her complaint, as well as the contents of any of her discussions with Respondent's supervisors or security agents.

The General Counsel and Charging Party also make various other arguments with respect to the characterization of the information herein as ''witness statements'' under *Anheuser Bush*. They argue initially that the reports of the conversations between Jackson and Respondent's officials are not ''statements,'' since they were not formalized into any kind of written statement, and were never signed or adopted by Jackson. However I find no requirement in *Anheuser Bush* or any subsequent case, that the ''statement'' be written, signed, or adopted by the witness. I note that Black's Law Dictionary defines a statement as simply ''a declaration of matters of fact.'' In my view such a narrow construction of *Anheuser Bush* would be exalting form over substance. The evil sought be proscribed, i.e., the intimidation of witnesses, is just as real, if not more so,[16] when the ''statement'' is given orally by the witness to the employer's officials.

They also contend that Jackson was not a ''witness'' to any incident, since she did not observe Lynch either accessing her account or disclosing a nonpublished number. I find this contention to be unpersuasive and in fact disingenuous. Indeed they assert, correctly as I have found, that such information is relevant to the Union's collective-bargaining responsibilities in that it may disclose exculpatory information, or persuade the Union to no longer pursue the grievance. It is therefore inconsistent to now argue that since Jackson did not observe the misconduct that led to Lynch's discipline,[17] that her complaints were not ''witness statement.'' Jackson's complaints to Respondent initiated the investigation, which led to Respondent discovering that Lynch violated its rules. Thus it is clearly information ''obtained during the course of an employer's investigation of employee misconduct.'' *Anheuser Bush*, supra at 984.

Finally in connection with the intimidation issue, it is argued that the record contains no evidence that Jackson was coerced or intimidated by the Union. While the Board's decision in *Anheuser Bush* referred only to the risk of intimidation or coercion by employers or unions, clearly intimidation by the grievant was meant to be encompassed by the admonition.[18] The focus of the concern against witness intimidation it seems to be is applicable to conduct by anyone who attempts to ''undermine the grievance arbitration process'' by seeking to intimidate witnesses who supplied information during an investigation of misconduct, to change or withdraw their previously given statements. I note in this connection *Conoco*, supra, where the Board in evaluating the less restrictive obligation under *Transport of New Jersey*, supra, to supply names of witnesses, observed that intimidation or coercion by the union and or the grievant of witnesses, could be found to possibly restrict the necessity of supplying that information to the union. It follows therefore that the already restrictive obligation to supply witness statements under *Anheuser Bush* can and in my view is affected by evidence of intimidation, as here, by the grievant toward the complaining witness.

Accordingly, based on the above analysis, I believe that the relevant information requested herein by the Union, i.e., the undisclosed portions of the note screen and the investigative report, which reflects conversations between Jackson and Respondent's representatives, constitute ''witness statements,'' and are privileged from disclosure. *Anheuser Bush*, supra; *Whirlpool*, supra; *Certainteed*, supra; *Conoco*, supra. Therefore Respondent has not violated Section 8(a)(1) and (5) of the Act by failing to furnish this information to the Union. I shall therefore recommend dismissal of this allegation of the complaint.

THE REMEDY

Having found that Respondent has violated Section 8(a)(1) of the Act, I shall recommend that it cease and desist therefrom and to post appropriate notices.

Charging Party requests that I additionally recommend that Respondent be ordered to expunge the statement taken from Lynch during the investigatory interview, which has been found to have been conducted in violation of Lynch's *Weingarten* rights. Respondent argues that such a remedy is precluded by *Taracorp Industries*, 273 NLRB 221 (1984).

[15] I note that Lynch, although called as a rebuttal witness by the General Counsel to testify about other matters, did not deny the above-described conversation with Jackson, nor making the remarks attributed to her.

[16] In fact it seems to me that the possibility of intimidation of witnesses would be greater in the case of oral statements, since it would be more likely that a witness could be persuaded to withdraw or change their statement, when they have not signed or adopted such statements incorporating their remarks to employer's representatives.

[17] Note that I have rejected Respondent's argument above that the information was not relevant because Respondent did not rely on Jackson's statements to establish the accessing of her account or the disclosing of the unpublished phone number to Lynch's niece.

[18] I note in any event that Lynch was shop steward for the Union at the time of her call to Jackson.

The General Counsel seeks only a cease-and-desist order, and has not supported Charging Party in its request for the expunction remedy.

In *Taracorp*, supra, the Board, reversing prior precedent,[19] held that it will not impose a make-whole remedy, where the employer's only violation is the denial of an employee's request for representation at an investigatory interview.[20] The Board, taking cognizance of courts of appeals repeated refusals to endorse the Board's prior efforts to impose such orders, concluded that these courts were correct. The Board held that Section 10(c) of the Act, which prohibits the awarding of backpay or reinstatement of individuals suspended or discharged for cause, precludes the Board from adhering to its previous make-whole position in *Weingarten* cases. Additionally, the Board emphasized other limitations on its authority, such as not ordering puntive remedies, and not having its remedies serve as a windfall to employees or employers. The Board viewed its imposition of the make-whole remedy in *Weingarten* cases as violative of these principles.

Finally, the Board observed that post-Board decisions in *Weingarten* cases had exceeded the intended scope and limitations in the Supreme Court's decision. ''What began as a limited protection of employees and a potential guide to management in conducting fair and expeditious investigations of employee misconduct has been a labyrinth of rules and procedures analogous to the law of criminal procedure.'' Id. at 223.

Charging Party submits, however, that an expunction remedy is not precluded by *Taracorp*, since neither reinstatement nor backpay is being ordered, and that Section 10(c) of the Act is not violated. It is argued that the Board's responsibility to devise remedies to ''undo the effects of violations of the Act,'' *Fibreboard Paper Products v. NLRB*, 379 U.S. 220 (1964), warrants a remedy herein more substantial than a cease-and-desist order. Thus Charging Party contends that permitting Respondent to use the statement unlawfully obtained from Lynch would essentially reward Respondent for its unlawful conduct and would constitute a ''windfall'' to Respondent, since it does not rectify the wrong committed, and does not discourage employers from violating an employee's *Weingarten* rights. Charging Party points to the remedy used in criminal cases, where *Miranda*[21] rights of suspects are violated and the statements obtained therein are not permitted to be utilized.

Finally, Charging Party cites *Illinois Bell Telephone Co.*, 251 NLRB 932 (1980), where the Board granted such a remedy to supplement a make-whole remedy of reinstatement and backpay. While conceding that the Board subsequently modified its decision by deleting the make-whole remedy in according with *Taracorp*,[22] Charging Party argues that the Board did not discuss the portion of its original remedy providing for expunction of the interview statement.

While Charging Party's arguments are both innovative, and somewhat persuasive, I am not convinced that such a remedy is appropriate in view of *Taracorp*, supra. While I agree that the remedy of expunction may not be literally precluded by *Taracorp*, I believe that such a remedy would be contrary to the spirit and rationale of that decision.

I agree with Respondent's contention that such a remedy would in all probability prevent Respondent from sustaining its suspension against Lynch, without the use of such evidence at an arbitration proceeding. Thus we would have an indirect attempt to bypass *Taracorp*, resulting in Lynch's discipline which was ''for cause,'' being overturned by virtue of the Board's action. It is of course true as pointed out by Charging Party that Respondent could still be successful in its attempt to discipline Lynch by relying on evidence obtained prior to the interview. However in my view this result brings us back to a procedure similar to the framework that the Board adopted in *Kraft*, but reversed in *Taracorp*, of trying to determine if the employer could establish that its decision to discipline the employee was not based on information obtained at the interview.

Since it is undisputed herein that Lynch was disciplined ''for cause,''[23] in my view the ordering of expunction of her statement admitting wrongdoing would result in a probable ''windfall'' to Lynch, and be considered ''punitive'' towards the Respondent. *Taracorp*, supra at 223.

I also find Charging Party's analogy to *Miranda* cases to be misplaced. There are significant differences in foundation and scope between *Miranda* and *Weingarten* rights. *Postal Service*, 241 NLRB 141, 142 (1979). Moreover Board trials are not criminal proceedings *Erie County Plastics Co.*, 207 NLRB 564, 570 (1973), enfd. 505 F.2d 730 (3d 5th Cir. 1974). It would seem to be rather inconsistent for the Board to utilize criminal trial remedies, while consistently arguing that criminal rights, such as pretrial discovery, rights to exculpatory material (*Brady v. Maryland*), 373 U.S. 83 (1963), and even *Miranda* rights themselves[24] do not apply to respondents in Board proceedings. Additionally I would note the Board's own language in *Taracorp*, supra, lamenting the fact that the Board's expansionist rulings in interpreting *Weingarten* had ''become a labyrinth of rules and procedures analogous to the law of criminal procedure.'' Id. at 223. In may view a remedy such as that proposed by Charging Party would violate the rationale of *Taracorp* and would ''encourage the transformation of investigatory interviews into formalized adversary proceedings, a result the Supreme Court clearly wished to avoid.'' Id.

Charging Party's citation of *Illinois Bell*, supra, as precedent for its position, I find to be misplaced. While the supplemental decision therein did not discuss the portion of its original remedy, granting the relief sought herein by Charging Party, more significantly the Order issued did not include such a remedy. 275 NLRB at 149. It is apparent and I find that the expunction was ordered in the original *Illinois Bell* case, incidental to the make-whole order issued therein, similar to the Board's *Sterling Sugars*[25] remedy in unlawful discharge cases. Charging Party also argues that no post-*Taracorp* cases preclude such a remedy. Charging Party misperceives its burden on such an issue. It is urging an un-

[19] *Kraft Foods*, 251 NLRB 598 (1980); *Illinois Bell Telephone Co.*, 251 NLRB 932 (1980); *Ohio Masonic Home*, 251 NLRB 606 (1980).

[20] A make-whole remedy can be appropriate in a *Weingarten* setting only if an employee is discharged for asserting the right to representation. Id. at 223. All parties admit that such is not the case herein.

[21] *Miranda v. Arizona*, 384 U.S. 436 (1966).

[22] 275 NLRB 148 (1985).

[23] For the purposes of this discussion, ''cause'' does not mean good or bad cause, just not based on protected activity. *Taracorp*, supra at 223.

[24] Thus it is not required that witnesses be given *Miranda* warnings before an affidavit is taken from them by Board agents.

[25] 261 NLRB 472 (1982).

usual and innovative remedy, and it has the obligation to cite precedent to support such a request, not merely to observe that no post-*Taracorp* cases preclude the remedy.

Indeed cases subsequent to *Taracorp* have not ordered the remedy sought by Charging Party herein. See *Montgomery Ward & Co*., 273 NLRB 1226, 1227 (1984), where the employer obtained a confession of wrongdoing from an employee in an interview in violation of his Weingarten rights. The Board citing *Taracorp* found that a cease-and-desist order was the appropriate remedy, and did not order that the confession obtained by the employer be expunged.

Accordingly, I shall deny Charging Party's request for an expunction order of the statement taken from Lynch during the unlawful interview herein.

CONCLUSIONS OF LAW

1. The Respondent, New Jersey Bell Telephone Co., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local 1022, Communications Workers of America, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) of the Act on November 4, 1987, by conducting an investigatory interview with Elizabeth Lynch, while ignoring her request for union representation at the interview.

4. The aforesaid unfair labor practice constitutes an unfair labor practice affecting commerce within the meaning of Section 2(6) and (7) of the Act.

5. Respondent has not engaged in any other unfair labor practices as alleged in the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[26]

ORDER

The Respondent, New Jersey Bell Telephone Company, Toms River, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Requiring that employees participate in interviews or meetings when the employees have reasonable grounds to believe that the matters to be discussed may result in their being disciplined and where representation at those interviews or meetings has been denied.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at Toms River, New Jersey facility copies of the attached notice marked ''Appendix.''[27] Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaints be dismissed insofar as they allege violations not specifically found herein.

[26] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[27] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''